



[2003] OSC 315

Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

REVISED COPIES ISSUED
State Reporting Bureau
Date: 25 August, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

DUTNEY J

No S404 of 2000

ANNABELL GUTHENBERG

Applicant

and

CONSOLIDATED MEAT GROUP PTY LTD

Respondent

ROCKHAMPTON

..DATE 22/08/2003

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application by the plaintiff to amend her statement of claim.

1

In paragraph 6 of the original statement of claim the plaintiff alleged that in the course of her employment by the defendant, on the 11th of June 1997, at 11.30, while she was packing briskets, she reached across the table to pull a cut of brisket towards her which weighed about 25 kilograms, and as she did so she caused herself severe personal injury.

10

By an amended statement of claim, which was filed on the 6th of February this year, the plaintiff seeks to amend the particulars to allege, in essence, that during her shift on the 11th of June 1997 she had been reaching across the brisket table, grabbing briskets, turning them over to check for nodules, and if nodule-free, packing them into a plastic bag. After packing, they were placed in a cardboard carton.

20

30

She was having trouble keeping up with the slicer and had to work fast, indeed, somewhat faster approaching 11.30 because the packer working with her had to go to the toilet and she fell behind. At about 11.30 she had to pack a brisket which she estimated weighed approximately 25 kilograms. As she reached, and stretched, to pull the brisket across the table, she suffered the onset of significant pain in the left shoulder and spine.

40

50

Accordingly, she wishes to amend paragraph 7, as well, to include, in the alternative to the original claim, a claim

JUDGMENT

60

that as a result of the continual and repetitious manual handling of the briskets, she suffered the injury.

1

The defendant opposes the application on the basis that it seeks to add a new cause of action after the expiration of the limitation period.

10

I am troubled by whether it does so. It seems to me that it is the same injury which is alleged to have manifested itself at the same time, and the broad nature of the cause of action, namely, one for negligence, breach of statutory duty, or breach of contract, is the same.

20

Nonetheless, it is submitted by the defendant that it is a new cause of action because the original cause of action was based upon a single lift of a brisket, whereas she now wishes to alternatively allege that it was not just that lift, but all of the lifts during that shift, which, in combination, caused the injury to manifest itself at that time.

30

I am not convinced that it is a new cause of action as opposed to simply a re-particularisation of the same incident, and in that respect section 11 of the Limitation of Actions Act limits to three years a claim for damages for negligence in respect of personal injury. There is, in this case, a claim for damages for negligence for the personal injury. It is now simply sought to allege as contributing to the injury what might, on the original pleading, only have been background

40

50

facts explaining why the plaintiff was more susceptible of injury on the final lift.

1

If I am wrong about that however, it seems to me that I have power to grant leave to amend under rule 376 of the UCPR. That rule empowers the Court to give leave to amend a pleading to include a new cause of action if it arises out of the same facts, or substantially the same facts, as a cause of action for which relief has already been claimed in the proceedings.

10

This seems to me to be a claim arising out of substantially the same facts. Substantially the same in the sense that it is the same injury, occurring at the same time, following the same lift of the brisket.

20

Whereas previously the plaintiff might have argued that the facts which she now wishes to plead as material facts in the statement of claim were relevant as background facts to show why her muscle fatigue might have rendered her more susceptible on the last lift, she now wishes to say that they in fact contributed. That seems to me to be substantially the same factual background as the original cause of action.

30

40

I am not satisfied that the facts pleaded create any particular difficulties for the defendant. What is alleged, it seems to me, is what is a probably uncontroversial description of the system of work. The critical feature is that the plaintiff says she was having trouble keeping up, and for that reason was working faster than she would, no doubt,

50

JUDGMENT

allege was reasonable, but I don't think that presents any particular difficulties for the defendant.

In the circumstances I propose to grant leave to amend in accordance with the amended statement of claim filed on the 6th of February 2003.

1

10

20

30

40

50